IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

APPEAL FROM ORDER NO.1060 OF 2005
WITH
CIVIL APPLICATION NO.1281 OF 2005

Vesava Mangela Machhimar Samaj Sarvodaya
Co-operative Housing Society Ltd. ...Appellant.
Vs.
Mrs.Manali Mangesh Sawant & Ors. ...Respondents.
....
Mr. Anil Singh with Mr. Devendra Sharma for the Appellant.
Mr. R. I. D'Souza for Respondent No.1.
Mr. V.B. Sakhare, AGP for Respondent No.4.
Mrs.Geeta Joglekar for Respondent No.3.
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CORAM : DR. D.Y. CHANDRACHUD, J.

December 22, 2005.

P.C.:

This appeal arises out of an order of the City Civil Court declining ad-interim relief. According to the Appellant, the First Respondent has not constructed 120 flats as was agreed upon between the parities in clause 1 of the Development Agreement dated 17th August 1999. Counsel appearing on behalf of the First Respondent states that 116 flats are constructed and that the Society in its communication dated 23rd October 2004 (a copy of

which has been placed on the record) has agreed that four flats may be deleted from the Ground Floor so as to fulfill the requirement of the Municipal Corporation. This is a matter which would have to be adjudicated upon at the hearing of the motion. However, in order that the exact number of flats that have been constructed should be verified, parties are agreed to the appointment of a Court Commissioner. Accordingly, the Registrar of the City Civil Court is directed to depute an officer of that Court to visit the site and to submit a report to the City Civil Court on the number of flats constructed on that plot, other than Row Houses. On the request of the Learned AGP, it is clarified that neither the order of the City Civil Court, nor the order of this Court shall come in the way of the State Government or any Competent Authority of the Government taking action in accordance with law, should there be any violation of the terms of allotment in the construction of the building and Row Houses. The Municipal Corporation shall within a period of four weeks from today caused an inspection to be conducted of the site by the concerned officials in the Building Proposals Department for the purposes of determining as to whether the construction of the building and the row houses has taken place in accordance with the sanctioned plan. At this stage,

it is not necessary for this Court to pass any further orders in an appeal against the refusal of ad-interim relief. It would be open to the parties to urge all appropriate contentions before the City Civil Court at the hearing of the Motion. It would be open to the parties to apply for such reliefs as they may be advised to pursue after the report is submitted before the Trial Court. The Appeal is accordingly disposed of.

In view of the disposal of the appeal, the Civil Application does not survive and is accordingly disposed of.

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